

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

VIRGINIA M. MCNEIL,

Plaintiff,

v.

Case No. 10-C-461

MICHAEL J. ASTRUE,

Defendant.

ORDER

On May 28, 2010, the plaintiff, Virginia M. McNeil (“McNeil”), filed this action, seeking review of a final decision of the Commissioner of Social Security denying her claim for disability insurance benefits. Accompanying her complaint was a motion for leave to proceed in forma pauperis, which was denied by United States District Judge William C. Griesbach. After the parties consented to magistrate judge jurisdiction, the plaintiff filed a renewed petition to proceed in forma pauperis on June 22, 2010.

To authorize a litigant to proceed in forma pauperis, the court must make two determinations: First, whether the litigant is unable to pay the costs of commencing this action; and second, whether the action is frivolous or malicious. 28 U.S.C. §§ 1915(a) and (e)(2)(B)(i). Because this court finds that McNeil has satisfied both prongs of this test, her petition for leave to proceed in forma pauperis will be granted.

In her application and affidavit to proceed in forma pauperis, McNeil avers that she is currently not married, and that she receives one-half of her deceased husband’s pension. She owns a 2002 Dodge Intrepid, valued at approximately \$4,000, and she also owns her own home, valued at approximately \$80,000. Additionally, she has \$170.00 in a checking or savings account. McNeil avers that her total monthly income is \$339.73 and her total monthly expenses total upwards of

\$1,500. Her total monthly expenses include \$151.28 for her mortgage, as well as expenses for a phone, TV dish, “US Bank,” “AT&T credit,” “AARP,” WE Energies, “Discover,” health and dental insurance, car insurance, prescription medications, co-pays for doctor visits, and therapy. In my view, McNeil has satisfied the requirements of 28 U.S.C. § 1915(a) and is unable to pay the \$350.00 filing fee.

McNeil must next demonstrate that her action has arguable merit as required by 28 U.S.C. § 1915(e)(2)(B)(i). An action is frivolous if there is no arguable basis for relief either in law or in fact. *Denton v. Hernandez*, 504 U.S. 25, 31 (1992) (quoting *Neitzke v. Williams*, 490 U.S. 319, 325 (1989)); *Casteel v. Pieschek*, 3 F.3d 1050, 1056 (7th Cir. 1993). In her complaint, McNeil states that she is seeking review of the Commissioner of Social Security’s decision denying her application for disability benefits for lack of disability. McNeil has the right, under 42 U.S.C. § 405(g), to obtain judicial review of a final decision of the Commissioner.

The standard of review that the district court is to apply in reviewing the Commissioner’s decision is whether the decision is supported by “substantial evidence.” 42 U.S.C. § 405(g); *Marcus v. Bowen*, 979 F.2d 602, 604 (7th Cir. 1992); *Ehrhart v. Sec’y of Health & Human Servs.*, 969 F.2d 534, 538 (7th Cir. 1992). Substantial evidence “means more than a mere scintilla of proof, instead requiring such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Ehrhart*, 969 F.2d at 538 (internal quotations omitted). The court, in reviewing the Commissioner’s decision, may neither substitute its judgment for the Commissioner’s nor “merely rubber stamp” the Commissioner’s decision. *Id.*

It would be inappropriate for the court to decide at this early juncture that McNeil’s claim has no basis in either law or fact. To do so would be to find that the Commissioner’s decision is supported by substantial evidence without the court’s even seeing any of the evidence. Therefore, the court

concludes that there may be a basis in law or in fact for the plaintiff's appeal of the Commissioner's decision and that her appeal may have merit as defined by 28 U.S.C. § 1915(e)(2)(B)(i).

NOW THEREFORE IT IS ORDERED that McNeil's application for leave to proceed in forma pauperis be and hereby is **GRANTED** pursuant to 28 U.S.C. § 1915(a) and (e)(2)(B)(i).

SO ORDERED this 28th day of June 2010 at Milwaukee, Wisconsin.

s/ William E. Callahan, Jr.
WILLIAM E. CALLAHAN, JR.
United States Magistrate Judge